

MINUTES
HOUSE TRANSPORTATION & DEFENSE COMMITTEE

DATE: Friday, March 10, 2017

TIME: Upon Adjournment

PLACE: Room EW40

MEMBERS: Chairman Palmer, Vice Chairman Shepherd, Representatives Gestrin, Hixon, Kauffman, Packer, Youngblood, McDonald, Dixon, Harris, Holtzclaw, Monks, DeMordaunt, Syme, King, Wintrow, Gannon

**ABSENT/
EXCUSED:** None

GUESTS: Lori Burelle; Helen Brookman; Russell Westekoy; Teresa Baker, Idaho Association of Cities; Roger Seiber, Ada County Highway District; Cynthia Gibson, Idaho Walk Bike Alliance

Chairman Palmer called the meeting to order at 11:36 A.M.

Chairman Palmer announced a change in presenter for **H 251** from **Rep. Loertscher** to **Jonathan Parker**, Idaho Association of Highway Districts

H 251: **Jonathan Parker**, Idaho Association of Highway Districts, presented **H 251**. This legislation amends Section 40-114 (3), Idaho Code, to amend the definition of the term "Maintenance" to the previous 2013 statutory definition. During the 2013 Legislature, **H 321** amended the definition of "Maintenance" to include only examples of maintenance work that would be considered in establishing a highway district's prescriptive easements. The current definition of the term "Maintenance" is ambiguous as it has been interpreted in creating affirmative obligation of highway districts to do "snow removal, sweeping, litter control, weed abatement and placement or repair of public safety signs." This was not the Legislature's intent in the 2013 amendment.

Mr. Parker stated **H 251** should be sent to the Amending Order for the purpose of adding two amendments. Mr. Parker requested the Committee Page distribute the document containing the proposed amendments. (Attachment 1) The two amendments include: 1. Keeping the phrase "public right of way" rather than striking it out, and adding the phrase "which may include" prior to the description of duties. 2. A new section relating to Section 40-1406 Idaho Code, starting on line 21 of the legislation, adding the city "shall retain its authority and responsibility over sidewalks under Idaho Code 50-317."

Mr. Parker stated **H 251** returns the status of this law to 2013 and aims simply to change the current language to address public concerns and reconcile jurisdiction conflicts.

In response to committee questions, **Mr. Parker** stated Memorandums of Understanding exist between the cities and the highway districts regarding snow and litter removal, and called on **Roger Seiber**, Ada County Highway District, to yield to the question.

In response to committee questions, **Roger Seiber**, Ada County Highway District, stated the Ada County Highway District has always been responsible for snow removal in the Boise Bench area, and will continue to do so. Title 50, Section 317, which deals with municipal corporations, states that all sidewalks are the responsibility of the city to be clear from snow, ice, and rubbish.

In response to committee questions, **Mr. Seiber** stated the City of Boise and Ada County Highway District meet very regularly with each other and with the public to delegate tasks and projects. The responsibilities of the two groups have not changed. **H 251** was created to assist with defining the "right of way," the width of roads, and how to proceed with an abandoned road, which were questions in 2013 legislation that prompted a revisit of the term "maintenance." ACHD is still responsible for snow removal, and any interpretation that they were not or currently are not is incorrect.

In response to committee questions, **Mr. Seiber** stated the word "may" in the legislation seeks to define what is flexibly qualified or quantified under "maintenance," rather than the interpretation that "may" allows the authorities to opt out of doing their duties (i.e. "may or may not" remove snow).

In response to committee questions, **Mr. Seiber** stated the phrase "public right of way" was in the legislation to begin with because of the 2013 legislation seeking to define an abandoned road and its provisions, which could be misconstrued as "maintenance." The prior legislation hoped to define what an abandoned road was, not what local transportation governance and jurisdictions may or may not do.

In response to committee questions, **Mr. Seiber** stated the six cities in Ada County (Boise, Meridian, Eagle, Garden City, Kuna, and Star) and their elected officials are going to see this legislation differently. The views of the Idaho Association of Cities and the Idaho Association of Counties are the reason that the phrase "public right of way" is back in **H 251**. A public right of way is just one place to put the snow when plows come through, because the only alternative in many cases to having snow/debris on the sidewalk is to leave it in and on the road itself. ACHD exceeded their snow removal budget by \$6,000,000 this year.

In response to committee questions, **Mr. Seiber** stated ACHD plows all arterial roads, side roads, and alleys in a defined hierarchy. Due to the exceptional snow, some levels of that hierarchy were not reached. There were discussions about the conditions every morning. The responsibilities of a highway district are all-inclusive, and it is the responsibility of the commissioners to oversee the duties of the highway districts to ensure that the roads are kept safe.

In response to committee questions, **Mr. Seiber** stated the change from "including" to "may include" in the legislation would best be answered by a legal expert, and called on **Steve Price**, General Counsel to Ada County Highway District, to yield to the question.

Chairman Palmer stated the purpose of the hearing is to discuss the legislation and not to air grievances.

In response to committee questions, **Mr. Price** stated the definition of "maintenance" has always had that wording, and includes an affirmative obligation on all highway districts to remove snow from all highways and public rights of way. Looking closer, "maintenance" is further defined as an act to "preserve from failure or decline, repair, refurbish, repaint, or otherwise keep an existing highway or public right of way in a suitable state for use." It is the responsibility of ACHD and all other highway districts to keep roadways, regardless of snow amount, suitable for public use. That affirmative obligation does not go away.

Mr. Price stated the qualifier is to preserve examples of what that entails, or what it means to keep that road in suitable conditions. The legislation in 2013 provided examples of maintenance with prescriptive rights of way. Legislators worried that it would be too easy for highway districts to claim that certain roads were prescriptive, so they wanted specific examples of maintenance to be listed, as they are in **H 251**. The Attorney General believed the former legislation created mandatory obligations that would not be appropriate for smaller highway districts that cannot afford maintenance-related vehicles such as street sweepers. By adding this language in **H 251**, the prescriptive examples remain, but they may be practiced flexibly. The highway districts are still obligated to maintain suitable roadways, contrary to popular interpretations of the bill.

In response to committee questions, **Mr. Price** stated under Chapter 13, 40-1310 Subsection 8, Idaho Code, highway districts have the authority to control road use during seasonal and inclement weather. This legislation is not concerned with the authority to open or close roads.

Mr. Price stated a prescriptive right of way exists if a governmental entity uses a road and the public maintains it for 5 years, then the public owns that road. If a public entity provides the maintenance for 5 years, the definition of maintenance becomes more critical. The examples of maintenance in this legislation help establish what types of maintenance activities can be exemplified in that 5 year period to establish prescriptive rights of way. The 2013 amendment made it much harder for highway districts to establish rights of way.

In response to committee questions, **Mr. Parker** stated the unusually harsh winter brought many issues to the forefront that weren't given as much attention in 2013. The snow removal maintenance of the last winter occurred under the current legislation which uses the language "shall," rather than "may."

In response to committee questions, **Mr. Parker** stated the cities had not come together, only the counties, and called on **Mr. Price** to yield to the question.

Mr. Price stated the ACHD has reached out to the cities and the ACHD Commission has met and is in full support, as well as the Idaho Association of Highway Districts.

Rep. Gannon cited a picture provided by a constituent to the committee, stating ACHD snow debris on sidewalks and personal properties are creating an issue. The homeowner has been bearing the brunt of this issue, when there needs to be consensus for the responsibility of sidewalk cleaning between ACHD and the City of Boise. (See Attachment 1)

Mr. Price stated the picture is not pretty, but the crews at ACHD were working 24 hours a day, 7 days a week, with unsophisticated technology. The City of Boise, in this case, was the agent responsible for clearing the sidewalk for public use. ACHD is always going to be responsible for total infrastructure, and would be ineffective for the purpose of clearing the 4,400 miles of sidewalks in Ada County. The proposed amendment keeps the same delegation of authorities between the cities and the highway districts on sidewalks.

In response to committee questions, **Mr. Seiber** stated ACHD is still looking for public feedback so that they may improve their methods to avoid situations like this. ACHD was overwhelmed by the amount of money and resources needed for this winter. The amount of money required to fight this kind of storm on an annual basis would be astronomical.

Lori Burelle, self, spoke in opposition to **H 251**. Ms. Burelle cited personal experience with snow removal and the experiences of several family members working in snow removal and transportation. To the general public, this legislation's use of "may" sounds hesitant to plow snow or pick up litter. After the very harsh storm season, this bill comes at a very bad time and has the public nervous about the road conditions of winters to come.

Helen Brookman, self, spoke in opposition to **H 251**. Ms. Brookman discussed the picture she brought to committee (Attachment 1), stating citizens were forced to walk in the roadways of busy streets when sidewalks are covered in debris.

Rep. Gestrin spoke in support of **H 251**, stating the snow that winds up on personal property as the result of clearing the public right of way is a natural consequence that all homeowners face, especially in areas that frequently get a lot of snow. Rural areas especially need the flexibility in maintenance as proposed in this bill.

MOTION: **Rep. Gestrin** made a motion to send **H 251** to the General Orders.

SUBSTITUTE MOTION: **Rep. Gannon** made a substitute motion to **HOLD H 251** in Committee.

Rep. Gannon spoke to the substitute motion, explaining that the State needs defined rules, and that these changes do not resolve the fundamental issue.

Rep. Packer spoke to the original motion, stating this is not just an Ada County issue, but one that deeply affects all 44 counties in the State. Some jurisdictions simply cannot afford not to have the flexibility allowed by the legislation. The phrase "right of ways" in addition to the extended definition causes problems.

Rep. Harris spoke to the substitute motion, stating the bill is incomplete and should do more to address citizen concerns.

Rep. McDonald spoke to the substitute motion, questioning what the highway districts would do if the next winter is just as harsh, or the winter after that. The cities and counties must all come together before a bill like this can be passed.

Mr. Parker stated **H 251** should go to the amending order, where additional changes can be made. The debate brought up several strong points, including the issue of smaller district resources. However, the flexibility of the language in the legislation is beneficial to local jurisdictions because it does not require maintenance beyond that which they can afford.

VOTE ON SUBSTITUTE MOTION: **Rep. Packer** requested a roll call vote. **The substitute motion failed by a vote of 5 AYE, 12 NAY. Voting in favor of the motion: Reps. McDonald, Harris, King, Wintrow, and Gannon. Voting in opposition to the motion: Chairman Palmer, Rep. Gestrin, Hixon, Dixon, Holtzclaw, Monks, DeMordaunt, Kauffman, Shepherd, Packer, Youngblood, and Syme.**

VOTE ON ORIGINAL MOTION: **Motion carried by voice vote. Reps. King, Gannon, and Wintrow** requested to be recorded as voting **NAY**. **Rep. Loertscher** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 12:51 P.M.

Representative Palmer
Chair

Jasmine Platt
Secretary